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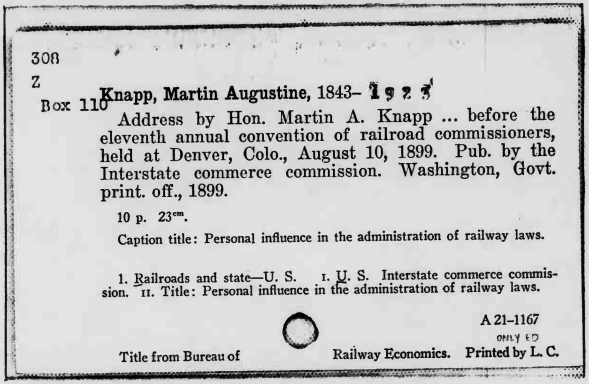

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HON. MARTIN A. KNAPP,

CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION,

BEFORE THE

ELEVENTH ANNUAL CONVENTION OF RAILROAD COMMISSIONERS,

HELD AT

DENVER, COLO., AUGUST 10, 1899.

PUBLISHED BY THE INTERSTATE COMMERCE COMMISSION.

WASHINGTON:
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PERSONAL INFLUENCE IN THE ADMINISTRATION OF RAILWAY LAWS.

ADDRESS

BY

HON. MARTIN A. KNAPP,

CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION,

BEFORE THE

ELEVENTH ANNUAL CONVENTION OF RAILROAD COMMISSIONERS.

In responding to the invitation with which you have honored me I have thought it suitable to emphasize a feature of our common work the importance of which has been much impressed upon me by experience and observation. It has therefore occurred to me to attempt some brief remarks on the subject of personal influence in the administration of railway laws.

The members of this convention, for the most part at least, hold their positions by virtue of various enactments of State and National legislatures. The work in which we are engaged pertains to a field of activity upon which legislation has but lately entered. Transportation by rail is of such recent origin and has developed with such amazing rapidity that neither its obligations nor its rights are yet clearly defined. Within the memory of men yet living all distribution on land was effected by animal power and along the common highway. From time out of mind the industries and associations of mankind had been adjusted to this mode of conveyance and governed by its inherent limitations. When modern discovery utilized steam as a practical motive power, a new and most potent agency was brought into subjection, with revolutionary effect upon the methods of business, the social relations, and the economic development of the race.

The marvelous change that has thus been wrought in the pursuits, enjoyments, and opportunities of life has made new and exacting demands upon those who exercise the law-making power and created the necessity for a class of public officials whose duties are unique and of first importance. The railroad of to-day is not only the chief instrument by which land commerce is carred on, but its influence is so powerful and its relation to every phase of activity so intimate and vital that its true place within the sphere of government control presents an inquiry of the gravest import.

While there is much confusion of thought upon this subject, and [illegible] some of us think, a surprising want of [illegible]pect understandin[illegible]

certain principles so generally recognized and so firmly fixed in public sentiment as to be no longer open to serious discussion. It seems to be instinctively felt that the means of public transportation sustain a peculiar and distinct relation to social order and are clearly separated in their nature and uses from every form of private enterprise.

It is quite plainly perceived that the great business of public carriage is a function of government which, for reasons of expediency, is not performed by direct agency, but delegated mainly to corporations created for that purpose. The belief that those who are intrusted with the performance of this function are rightfully subject to public control is now so general as to have almost the force of a political axiom. The right to just and impartial treatment in all that pertains to public transportation is seen to be an inherent and inalienable right, the very essence of which is equality. The injustice and disaster which attend the deprivation of that right are always obvious and often alarming. The opportunities for abuse are so manifold, and the evils resulting from excessive construction, reckless financiering, dishonest management, and the unrestrained competition of rival lines are so widespread and startling that the best efforts of legislation are needful to protect the public in the equal enjoyment of an indispensable service. So laws have been passed in most of the States and by the National Government for the regulation of railway carriers, and most of the members of this convention are charged with the duty of administering and enforcing those laws.

It should be observed at the outset that these laws are not so comprehensive and complete as those which apply to private occupations, and in many cases are little more than the declaration of principles. The rules of conduct prescribed by the State in respect of public carriage are in many respects so indefinite as to be little more than guides, and so imperfect as to be extremely difficult of application. While the duties we are called upon to perform are to a great extent judicial in their nature, yet we neither have the status of judicial tribunals nor are we furnished with separate machinery for giving effect to our determinations.

The general situation in which we are all placed in respect of our official functions is the natural result of the rapid development of railroad service and the tentative and experimental nature of many of the laws which we are called upon to administer. While the necessity for special restraints upon railroad carriers is everywhere conceded, there is yet no consensus of opinion as to the precise nature of those restraints or the extent to which they should be applied.

In this uncertain state of public mind, feeling its way almost blindly, it is inevitable that regulating laws should be crude in construction, inadequate in scope, and deficient in many important particulars. These obvious conditions not only result in many embarrassments and render our task extremely difficult, but they suggest at the same time the far-reaching importance of the work with which we are concerned.

To my mind there is to-day no public duty so onerous or responsible as that which is connected with the administration of railway laws. As the business of transportation lies at the foundation of all activities, and is the one upon which all others are in constant and complete dependence, so no position requires greater wisdom, broader views, sounder reflection, or more intelligent action than the office of railroad commissioner, for he is called upon to deal with the most intricate problem which confronts the present generation. The situation in which he is placed demands the maturest judgment and the largest exercise of instructed discretion. Indeed, I think it not too much to

say that under existing conditions the success of railway regulation depends more upon the members of this body than upon anything else.

It must be borne in mind that railroads have been constructed and operated on the theory that they are private enterprises, not essentially different in their relation to the State from a farm or a factory, and it was only natural that railroad managers should oppose the adoption of laws for their control and resist the effort to make those laws effective. It is our plain duty, therefore, to so administer these laws as to overcome this inherited notion, and lead railway officials themselves to see that a well considered scheme of regulation will operate, in the long run, to the advantage of the carriers as well as the public.

This opportunity for the exercise of what I venture to call personal influence may be first observed in connection with railroad management and operation. While it is our primary duty, a duty that can not be disregarded, to execute the laws as they are, whether we believe them to be wise or unwise, nevertheless it is practicable, I believe, to give such direction and character to the methods of enforcement as will range the interest and influence of railway corporations on the side of law. Indeed, I go to the extent of saying that railroad laws can not be successfully administered, or made to realize the objects for which they were enacted, unless those laws and the official bodies charged with their execution have the respect, the confidence, and the support of representative railroad men. And I believe our duties are better discharged and public advantage better assured the more we cultivate friendly relations with those who are in charge of railroad properties and who are primarily responsible for their proper management.

This implies no yielding to railroad blandishments, nor is it inconsistent in any respect with the obligations we have assumed. On the contrary, I believe it to be a policy dictated by wisdom, and suited in an especial manner to the attainment of the objects for which regulating laws are enacted. I conceive that the interests of the public, which is the paramount end in view, will be the more certainly promoted if public officials secure the confidence and win the respect of railroad managers. If we were warranted in acting upon the theory that laws upon this subject were designed solely for public advantage, a theory which I regard as unsound and misleading, even then the results desired would be more easily and surely secured if railroad officials saw in railroad commissioners men of character and capacity who desire to use their authority wisely and their discretion with intelligent prudence. I believe a vast amount of good can be accomplished by personal contact with railroad managers and the direct interchange of views upon matters of mutual interest. If such conferences are characterized by frankness and candor, as they ordinarily will be, the difficulties which railway officials encounter will be better understood by us, and such familiarity with their point of view will supply us with needful information and aid us to intelligent action.

This is especially so for the reason that, broadly speaking, we are exercising a legislative function. We are not merely administrative officers in the ordinary sense, charged with the enforcement of plain and definite laws, but we combine with that duty, to a greater or less extent, powers which are similar to those exercised both by judicial and by legislative bodies. We all know the time it takes in some cases to ascertain the legal meaning of the simplest statute affecting a subject which has long received legislative treatment and judicial consideration. Its application to a novel state of facts raises questions which require interpretation by the courts, so that a lengthy process of

struction is often required before a statutory enactment is fully tested and measured. If this be so in respect of matters which have long received legislative and judicial examination, how much more true is it of the laws relating to the conduct of railways, since the subject itself is of such recent origin and the facts presented are of such peculiar character that doubt and uncertainty inevitably arise at every step. It thus happens, and this is a matter of familiar experience, that the members of this body are frequently called upon to be the interpreters of railway law. In the effort to execute its provisions they must first give them construction, and to do this wisely requires a judicial temper, reasoning faculties of a high order, and a conscientious desire to give such expression to the legislative mandate as will make it most efficient and useful.

If I were to cite an instance to illustrate my present point I should take the case of that great jurist and lawgiver, John Marshall. In respect of what I am now trying to say the railroad law of our time is in a situation not unlike that of the Constitution of the United States when it was first adopted and its pregnant provisions began to be examined on every side to discover their meaning and practical effect. There is no doubt that the utterances of Mr. Marshall at this period did more to give direction to judicial thought and lay the right foundation for subsequent construction than any other influence which operated to expound the fundamental law of our Government. It was a new thing, so to speak, applied to new conditions. It was capable of a great variety of interpretations, yet fortunately the general trend of construction, largely directed by him at the outset, has enabled that instrument to sustain self-government and uphold the rights of the people in emergencies far more serious than were imagined by those who framed it. Something like this, as it seems to me, is the opportunity and demand presented to the members of this body. Their interpretation of new provisions, the general tone of their administration, the dignity, fair-mindedness, and conscientious intelligence which mark their official conduct, will set the pace for their successors and furnish the groundwork for the early success of public regulation. They have it in their power to influence railway thought and management to ends of public benefit. They may so conduct themselves as to arouse opposition, create constant friction, and minimize their usefulness by incurring the disrespect of those for whose restraint regulating laws are enacted; or they may so discharge their duty as to supply the deficiencies of the law with the vigor and wholesomeness of their personal influence and thereby secure results not otherwise attainable. In the respects which I have thus crudely suggested I hold that the offices we occupy are second to none in the requirements they impose and the opportunities they afford.

In the second place, it may be observed that this field of personal influence is unsurpassed, because those who are intrusted with the administration of railway laws are the custodians of public authority respecting matters of the greatest concern to every citizen. Not only this, but it is their privilege to mold public sentiment and inculcate right views respecting the office performed by railroad carriers. In the confusion of thought upon this subject to which I have alluded the public naturally looks to the members of this body for instruction and guidance. In a special and most important sense we are engaged in an educational work. Existing laws are experimental from the public point of view as well as from the railroad point of view. If those laws fail to meet public expectation or to satisfy public demands there will

be sharp inquiry whether that failure is inherent in the measures themselves or results from unwise and incompetent administration. The railroad commissioner, therefore, owes it to himself as well as to those who have conferred the office upon him to exhibit at all times such breadth and soundness of judgment and to put forth such intelligent efforts that, if disappointments result, they will be charged to the weakness and inadequacy of the laws and not to faulty or mistaken methods of enforcement.

Nor should we lose sight of the fact that regulating laws impose restraints and obligations upon the public as well as the railways. The legislative mandate applies equally to both. On this point there is need of plain and repeated instruction. The idea prevails in many quarters that regulation is solely designed for the correction of railway wrongdoing; it is too often forgotten that misconduct is not confined to the carriers. Especially is this so with reference to secret and preferential rates. The railroad manager who grants the concession is severely condemned, while the shipper who profits by the unlawful act escapes without censure. We shall do well to make it emphatic that the latter is not less guilty than the former. An aroused and quickened public conscience which clearly perceives the moral turpitude involved in lawbreaking, whether by a railroad agent, a shipper, or a ticket scalper, will do more than anything else to promote wise legislation and secure the success of regulating measures. In the directions here indicated our opportunities for usefulness are not exceeded by those connected with any other official position.

In the third place, this factor of personal influence will count for very much in respect of future legislation. While different theories find expression in current laws, whether those of advisory control or of positive authority, there is everywhere more or less demand for enlarging and perfecting the statutory basis of public regulation. The work committed to our hands will be greatly advanced if principles of legislation are correctly conceived and soundly applied. In this direction an educational force may be exerted of incomparable value. The people look to those who now occupy these official positions for wise and salutary recommendations. Legislators will be greatly influenced by what we say should or should not be done, and further measures will largely depend upon the views we advance and the reasoning by which those views are supported. To perfect in each State a code of railway laws suitable to its conditions and adapted to the needs of different localities, and to secure from the National Legislature needful measures for the control of interstate carriers, until throughout the whole United States there is a comprehensive and adequate scheme of railway enactments, is a task as difficult as it is important. In the effort to reach that end the members of this body should be foremost by reason of their familiarity with the subject, the comprehensive range of their observations, and the thoughtful character of their recommendations. The small number of men who compose the membership of this body can, if they are alive to their opportunities, if they are guided by a high sense of justice and influenced solely by considerations of public welfare, do more in securing wise legislation than can a thousand times their number in private station. Our opportunity for influence in this regard is unrivaled and our responsibilities extreme.

The railway problem is yet unsolved, and no question makes greater demand upon public officials or upon those in charge of railway properties. How to secure from carriers by rail the most efficient and most equitable service at the lowest reasonable cost; how to promote the

development and increase the usefulness of these agencies of commerce and at the same time hold them in such control as to prevent the abuse of corporate power; how to combine their facilities to the ends of highest utility without incurring the risk that public rights will be impaired or public welfare imperiled; how to harmonize conflicting interests of such vast proportions and place the people and the railways on a plane of equal advantage and protection, are questions of such far-reaching import as to test the wisdom of statesmanship and tax the resources of public authority.

While the railroads of the country have been of incalculable benefit, the chief agency of our wonderful growth and prosperity, their construction and management as private enterprises have brought about more or less friction and conflict with those who are dependent upon their services. This happens so frequently that in popular estimation there is an almost continuous controversy between the public on the one side and the carriers on the other. Both parties have been influenced by a desire to bring their differences to fair adjustment, and each of them has tried in its own way, though without much assistance from the other, to reach a satisfactory settlement.

On the part of the public the contest has been mainly carried on by means of legislation. The law-making power has been constantly resorted to for relief from real and protection against imaginary evils, and to force from the roads by statutory enactments compliance with popular demands. Scores of measures for controlling the methods and charges of railway carriers have been passed, many of which were well-considered and useful, though not a few were distinctly unwise and mischievous. At the outset some effort seems to have been made to provide restraints by means of charter provisions, which were modeled after those granted to canal and turnpike companies, but this method of furnishing safeguards against corporate wrongdoing was an undoubted failure. At best it was only a preventive remedy which was tried in a few cases and found of no value. The doctrine of noninterference by the Government was stoutly maintained during this period, and most of the States appear for a time to have abandoned all efforts to impose exceptional or restrictive laws upon railway carriers.

Prior to 1887 Congress had made no comprehensive effort to regulate commerce "among the several States." Its constitutional power in this direction had never been exerted, and consequently never tested. The railroads had already absorbed a large portion of the internal carrying trade, and were prosecuting their operations regardless of State boundaries, and restrained only by the lax and inefficient provisions of the local statutes under which they were organized. Under this system, or want of system, which characterized the history of railway legislation up to a recent period, abuses arose which the States were powerless to correct, and which assumed such serious proportions that the interference of the National Government was vehemently demanded. This demand was fortified by a decision of the United States Supreme Court in 1886 to the effect that a State has power to regulate rates only on such traffic as does not pass its boundaries, thus confining State authority within narrower limits than its exercise had been attempted. The agitation which had already aroused public sentiment culminated in the passage of the act to regulate commerce, approved February 4, 1887, and thus was inaugurated a scheme of Federal regulation.

Railway companies also have long attempted through voluntary action, induced by self-interest, to deal with the difficulties of unrestrained competition. Those difficulties were not seriously felt in the

early history of railroad operations. The lines first constructed were mostly of limited extent, and their business largely confined to traffic originating in the several sections where they were located. The opportunity for combination seems for some time not to have been appreciated, while the aggregation of capital and unification of control were generally regarded with distrust and hindered by opposition. Gradually, however, the consolidation of connecting lines was effected, until finally there came into existence the great railway systems with which we are familiar. The objections to consolidation of this character have mainly disappeared, for the predicted evils have not been experienced and the benefits to the public are everywhere recognized.

Although the relations of the roads have been greatly changed by this process of development, the resulting competition between systems has correspondingly grown in force and intensity. The conditions are different, but the difficulties have greatly increased. For many years railway managers have tried to maintain harmonious relations with each other, and thereby avoid the losses and demoralization of interline warfare. Yet during all this period the public opposition to rate agreements, division of competitive traffic, and other arrangements of similar character has been constant and decided. The cause of this opposition can be understood only when our railway history is viewed in connection with the social and economic development of the United States during the last half century. In dealing with this complex situation it is necessary to test the various measures adopted by their effects upon railway service and the relations of that service to the public; and we as students of railway questions should examine the results of efforts put forth from time to time by public officials and by railroad managers as different aspects of the difficulty have been viewed from their respective standpoints.

When the whole subject has thus been carefully examined in the light of reason and experience, there are certain conclusions which seem to me fundamental and for the support of which our influence should be exerted. In the first place it is seen that all measures of legislation are designed to the one inclusive end of securing at all times and to all persons just and equitable charges for public transportation. To attain this result and realize its advantages, the railroads of the country should be regarded in their entirety and treated so far as possible as a single system for all the purposes of legal regulation. Practically there is no such thing as an independent or isolated railway. There are many members, yet but one body. Between the different parts of this complex organization there is such relationship and mutual dependence that whatever affects one must in greater or less degree affect the others also and the public interest as well. Whatever, therefore, tends to harmonize action between different lines, whether connecting or competing, whatever operates to bring railway service into more uniform and systematic operation, should be promoted and encouraged by suitable enactments and appropriate administration.

Again, no just theory of legislation will proceed on the assumption that the public alone are in need of protection and that the railroads can take care of themselves. Such a view is unfair and illogical. The shipper is entitled to have his property transported at a reasonable price, the carrier equally entitled to reasonable compensation for performing the service. The collision of pecuniary motives by which both parties are influenced gives rise to the controversy over rates and charges. This conflict is incessant and sometimes extremely severe. But the shipper is not always worsted in the encounter. He is

often the successful contestant. The necessity of the carrier is often the opportunity which the shipper unscrupulously turns to his own profit. Odious extortions have been practiced by railway managers; shippers likewise have been unreasonable and dishonest. The public service in which the carrier engages is undertaken for private gain. The shipper avails himself of this public service, likewise for private gain. The selfishness of human nature is on both sides of the transaction.

Now, the object of legal regulation is to hold these opposing forces in stable equilibrium, to reduce contests and complaints to a minimum, and to bring the dealings between the railways and their patrons under the control of mutual justice. The sufficient scheme of legislation, therefore, will recognize the possibility of wrongdoing on one side as well as the other; it will be judicial rather than partisan in its aims and requirements, and while equipping the shipper with ample protection will also furnish the carrier with all needful defenses. This is true not only as to rates on competitive traffic, but also as to relative rates between competing centers of trade. So far as the law can provide remedies for grievances which grow out of these conditions, those remedies should be available both to the carriers and the public. Reasonable charges to the one and reasonable remuneration to the other are alike involved in any just idea of regulation; and laws which realize that idea in practical results will conserve the rights of the railways to the full extent consistent with the rights of the people.

Nor can these beneficent ends be reached, in my judgment, without conferring upon railroad corporations privileges of association and rights of contract with each other which are denied by existing laws. The time has come for combining the facilities and unifying the operations of railway carriers, that they may better meet the demand for stable rates, equal treatment, and cheaper transportation. We must surely believe that the Government of the United States has the strength, the courage, and the sagacity to permit this indispensable service to be performed by friendly association, and at the same time provide ample safeguard against the dangers of railway federation.

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